

**ZONING BOARD OF ADJUSTMENT
MINUTES
AUGUST 5, 2003
(Approved as amended 11/4/03)**

PRESENT: Forrest Esenwine, Chairman; Jack Dearborn, Vice Chairman; Leon Methot; June Purington; Harry Wetherbee; Naomi Bolton, Land Use Coordinator.

GUESTS: Peter Scott; Sandra Scott; Michelle Miller; Matt Doughty, Enpro Services; Gary Kitteredge, SW Realty Trust; Ginger Esenwine; Tim Galvin; Meri-Lyn Worthen; Eric Grenier; Kenneth Desjardins; Jennifer McCord; Mark C. Sargent; Eric Wood; Joanna Wood; Victor Thibeault, II.

I. CALL TO ORDER:

Chairman Esenwine called the meeting to order at 7:35 PM at the Weare Town Office Building. Chairman Esenwine asked the members present to introduce themselves and explained the procedure in which the board conducts its business.

II. PUBLIC HEARINGS:

Case #1303 Kenneth Desjardins Builders, LLC (Owner: Robert J. Covino)(Cont'd)
Special Exception, Article 27.3.10
Applicant is proposing on site septic systems in a cluster development.
Tax Map 402-067.13-67.16 Meadow Drive

Mark Sargent from Richard Bartlett & Associates, Ken Desjardins and Jennifer McCourt from Keach Nordstrom were present for this continued hearing. Mr. Sargent stated that he is here representing Ken Desjardins Builders. The only outstanding issue from the July meeting was to have a site specific soils survey performed on these lots. Mr. Sargent explained the two page plan. On page two there was a table demonstrating the lot sizes based on the soils types. In a cluster development the maximum number of bedrooms is three and the gallons per day per the State of NH is 450 gallons. On the smallest lot, the loading is 704 gallons per day which is above the 450 gallons required. There were a few changes in soil types from the soils book to the actual soils but not enough of a change to severely change the lot size calculations. The board reviewed the plans and it appeared that they had done what the board had asked them to do. Being there were no further questions or comments, Chairman Esenwine closed this hearing at 7:53 PM.

Case #1505 Patricia Hines (Continued Hearing)
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a 14' x 30' addition onto the existing home within the setback.
Tax Map 109-091 95 Daniels Road (Private)

Naomi informed the board that she had a conversation with Mrs. Hines today and they have changed their plans and would like to withdraw her application.

Case #1603 Peter T. & Sandra E. Scott (Continued Hearing)
Administrative Appeal, Article 14, Section 14.1
Applicant is alleging an error was made on 5/8/03 for a request to subdivide the existing 4.9 acre lot into two lots on Martin Road.
Tax Map 408-160 69 Martin Road

Case #1703 Peter T. & Sandra E. Scott (Continued Hearing)
Administrative Appeal, Article 14, Section 14.1
Applicant is alleging an error was made on 5/8/03 for a request to subdivide the existing 4.9 acre lot into two lots on Martin Road.
Tax Map 408-160 69 Martin Road

Mr. Scott explained that he has a lot containing 4.9 acres and an existing home. The lot has frontage on both Martin Road and South Stark Highway (Route 114). Mr. Scott further explained that they would like to subdivide the lot and create a 2.5 acre lot with the existing home off Martin Road and a new lot with 2.4 acres coming off of South Stark Highway (Route 114). Mr. Scott stated that he filed two applications because he was guided that way. The first is an administrative appeal from a conceptual Planning Board discussion. The board stated that there is no basis for the administrative appeal because a conceptual discussion with the Planning Board is non binding between either party. Therefore the board took up the variance. In 1999 the Town increased the minimum lot size on Town maintained gravel surface road to 10 acres. The board discussed this for a short time . Then Mr. Scott went through the five points of hardship, which are as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: proposed subdivided lots will be comparable in value and size to properties in immediate area.
2. That the granting of the variance will not be contrary to the public interest because: no measurable impact to town services while increasing potential tax base.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in it's environment for the following reasons: proposed lot has 500 + ft. frontage access on Route 114 and 77.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: proposed lot is located in the heart of an area with many sub 2.4 acre lots (ref: Brown Ridge Road development).
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: the subdivided lots will match the character of the immediate residential area with no reduction in value.
4. That by the granting this variance, substantial justice will be done because: owner will be allowed fair and reasonable use of his property without compromising the spirit and intent of current zoning restrictions.

5. That the use contemplated by the petitioner as a result of obtaining this variance will not be contrary to the spirit of the ordinance because: No impact to Town services, public safety nor change in character of immediate residential area.

Approving Abutters: NONE

Disapproving Abutters: NONE

Other boards: NONE

Public At Large: NONE

Being there was no further comments or questions, Chairman Esenwine closed this hearing at 8:18 PM.

Case #1803 Donald & Michelle Miller (Continued Hearing)

Variance, Article 18, Section 18.2.3

Applicant is requesting permission to relocate an existing shed within the setback of the property.

Tax Map 407-110

72 Lafrance Road

Michelle Miller was present and explained that they would like to move the existing shed from behind the house to the edge of the turnaround of the driveway. The purpose of the relocation is to be able to utilize more of their back yard. Mrs. Miller wasn't sure exactly how close to the property line this shed would be. She did have a letter from the abutting neighbor who didn't have an issue with the relocation. The board asked why this location and Mrs. Miller stated because the area was already free of trees. It appeared that the shed could be located outside of the setback but a few trees would have to come down. The board pointed out that without a detailed drawing with measurements the application isn't really complete. Also, one of the five points of hardship (point #3c) was not filled out. Chairman Esenwine moved to dismiss the case for the reason that the application and supporting documents were not complete, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Chairman Esenwine closed this hearing at 8:35 PM.

Case #1903 Gary Kitteredge (Continued Hearing)

Variance, Article 24, Section 24.6.1

Applicant is requesting to build a temporary shed to be built on the west side of Country 3 Corners. The shed will host equipment used in a treatment system.

Tax Map 408-171

833 South Stark Highway

Gary Kitteredge was present . The board reviewed the application and supporting information to see if it was complete. Leon Methot moved to accept the application as complete, Jack Dearborn seconded the motion. Unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Matt Doughty from Enpro Services explained that this site is in the process of being cleaned up per state mandate by air sparge. This proposed temporary shed will be located approximately 6 feet from the white line of the Route 77. The temporary shed will host equipment used in a treatment system in accordance with the remediation contract. Mr. Kitteredge went through the five points of hardship as follows:

1. That there **will not** be a diminution of value surrounding properties as a result of the granting of this variance because: the shed will be constructed to match existing building and will be out of sight from the front commercial area of store/station.
2. That the granting of the variance **will not** be contrary to the public interest because: the use will supplement cleanup of the contaminated site.

3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: The remediation contract requires the system to be built as such to complete work to restore the site to original condition.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: the system was designed to fit in that specific location as any other location would create an obtrusive location that would impact operations.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: the system will not interfere with normal business operations.
4. That by the granting this variance, substantial justice will be done because: the project will proceed as planned to expedite the remediation of petroleum contamination in the soil beneath the station.
5. That the use contemplated by the petitioner as a result of obtaining this variance will not be contrary to the spirit of the ordinance because: the system is a vital component of the project and must be installed accordingly.

Approving Abutters: NONE

Disapproving Abutters: NONE

Other Boards: NONE

Public at Large: NONE

Rebuttal of applicant: Mr. Kitteredge stated that this is needed to complete the last leg of the project. Chairman Esenwine closed this hearing at 8:55 PM.

Case #2003 Eric Grenier (Owner: Louis Page)
Variance, Articles 17 & 18, Sections 17.1.1 & 18.2.1
Applicant is requesting permission to build a residential home.
Tax Map 409-020 Bart Clough Road (Class VI)

Eric Grenier was present. June Purington stated that this lot has previously been heard by the owner and was denied. The board pointed out that the burden of proof is on the applicant, and unless something has changed considerably since the last time this was heard, the board cannot hear this application. The board suggested that the applicant go off and possibly seek some professional help with options that might be available. Jack Dearborn moved to reject the application as it is a request for a second variance, Leon Methot seconded the motion. Unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Chairman Esenwine closed this hearing at 9:05 PM.

Case #2103 Timothy & Carol Galvin
Special Exception, Article 30-A, Section 30-A.3.1.3
Applicant is requesting permission to build a residential home.
Tax Map 407-093 488 Mt. Dearborn Road

Tim Galvin was present. The board discussed the completeness of the application. The board felt that there was not enough information attached to the application to make a decision. The board pointed out that as part of the instruction package that is given out with the application points out what is needed to be submitted with the application. Chairman Esenwine moved to reject the application because it was

not complete as far as drawings and plot plans, Leon Methot seconded the motion. A vote was taken: 3 in favor (Methot, Purington, Wetherbee), 2 against (Esenwine, Dearborn). Therefore motion passes and applicant indicated that he will re-file for next month. Chairman Esenwine closed this hearing at 9:28 PM.

Case #2203 Victor & Jeanne Thibeault
 Special Exception, Article 19, Section 19.1.10
 Applicant is requesting permission to build an in-law apartment addition.
 Tax Map 403-016 765 Concord Stage Road

Vic Thibeault was present and stated that he is probably in the same predicament as the previous applicant. Mr. Thibeault went on to further explain that he did not expend the money for plans because he understood the process as being the plans would happen at the next stage when he went for a building permit. The board explained that in order to make a determination on an application all the information has to be submitted. Chairman Esenwine moved to reject the application because it is not complete (drawings, plot plans), June Purington seconded the motion. A vote was taken: 4 in favor (Methot, Purington, Esenwine, Wetherbee) and 1 opposed (Dearborn). Therefore the motion passes and the application is rejected. Chairman Esenwine closed this hearing at 9:40 PM.

Case #2303 David E. Welch
 Special Exception, Article 24, Section 24.8
 Applicant is seeking permission to allow off street parking within the front and side setbacks.
 Tax Map 109-017 299 South Stark Highway

Naomi informed the board that she had received a phone call from Mr. Welch indicating that he would like to be continued. Naomi informed Mr. Welch that the board needs the request in writing for them to act. At this point nothing has been received from the board and the applicant was not present to request the continuance in person. Therefore, Leon Methot moved to reject the application as there is no appearance of the applicant and no written request for a continuance, Chairman Esenwine seconded the motion. The board discussed the difference between rejecting the application or dismissing the case. After that discussion, Leon Methot withdrew his motion and Chairman Esenwine withdrew his second. Leon Methot then moved to dismiss the application based on the fact there was no representation or written request from the applicant, Chairman Esenwine seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Chairman Esenwine closed this hearing at 9:45 PM.

Case #2403 Eric R. Wood
 Variance, Article 3, Section 3.5.1
 Applicant is seeking permission to build a garage into the setback.
 Tax Map 403-117 16 Blake Road (Private)

Eric Wood and his wife Joanna were present. Mr. Wood explained that they would like to build a 24' x 34' garage on their property on Blake Road, which is a private road. Their property has 1.48 acres with an existing home. Due to the location of his leachfield and the very steep slope heading back into a wetland the proposed garage is shown on the certified plan by Mike Dahlberg is in the only location that

fits the property. The front setback on a nonconforming lot is 30 feet and the closest point of the garage would be 19', therefore they are looking for an 11' relaxation. Being there were no further comments or questions, Mr. Wood went through the five points of hardship as follows:

1. That there will not be a diminution of value surrounding properties as a result of the granting of this variance because: comparable housing on Blake Road already has 2 and 3 car garages.
2. That the granting of the variance will not be contrary to the public interest because: only a small percent of the garage will be over the setback line on a non Town maintained road.
3. That enforcement of the zoning ordinance will create an unnecessary hardship in that the zoning restriction:
 - a. As applied to the petitioner's property will interfere with the petitioner's reasonable use of their property, considering the unique setting of the property in its environment for the following reasons: steep slope, well line, wetlands.
 - b. As specifically applied to the petitioner's property has no fair and substantial relationship to the general purposes of the zoning ordinance for the following reasons: equitable placement of proposed building and existing structure with setback.
 - c. If relieved by a variance, will not injure the public or private rights of others for the following reasons: does not impact the use or maintenance of Blake Road.
4. That by the granting this variance, substantial justice will be done because: requested placement is only viable spot on Lot 117 due to the above limitations.
5. That the use contemplated by the petitioner as a result of obtaining this variance will not be contrary to the spirit of the ordinance because: Lot 117 is a lot of record. House is located to the front setback line. Garage will do the same with a minor overage.

Leon Methot moved to accept the application as complete, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee).

Approving Abutters: NONE

Disapproving Abutters: NONE

Other Boards: NONE

Public At Large: NONE

Being there were no further comments or questions, Chairman Esenwine closed this hearing at 9:55 PM.

III. REQUEST FOR REHEARING:

Case #0903-William Boisvert-Request for Rehearing: June Purington moved to accept for request for rehearing on Case #0903, Chairman Esenwine seconded the motion. A vote was taken: 0 in favor, 4 opposed and 1 abstained (Purington, Esenwine, Dearborn, Wetherbee-opposed; Methot-abstained), therefore the motion failed and the request for rehearing is denied. The reason for the decision is that the board felt there was no new evidence presented. Chairman Esenwine closed this hearing at 9:58 PM.

IV. CASE DECISIONS:

Case #1303 Kenneth Desjardins Builders, LLC (Owner: Robert J. Covino)(Cont'd)
Special Exception, Article 27.3.10
Applicant is proposing on site septic systems in a cluster development.
Tax Map 402-067.13-67.16 Meadow Drive

Leon Methot moved to grant the special exception for Case #1303, Jack Dearborn seconded the motion. Unanimous vote in favor: Methot, Purington, Esenwine, Dearborn, Wetherbee.

Case #1503 Patricia Hines (Continued Hearing)
Variance, Article 3, Section 3.5.1
Applicant is requesting permission to construct a 14' x 30' addition onto the existing home within the setback.
Tax Map 109-091 95 Daniels Road (Private)

This case has been withdrawn per the applicant.

Case #1603 Peter T. & Sandra E. Scott (Continued Hearing)
Administrative Appeal, Article 14, Section 14.1
Applicant is alleging an error was made on 5/8/03 for a request to subdivide the existing 4.9 acre lot into two lots on Martin Road.
Tax Map 408-160 69 Martin Road

Jack Dearborn moved to accept Case #1603, Leon Methot seconded the motion. Unanimous vote against: Methot, Purington, Esenwine, Dearborn, Wetherbee. The reason for denial is: There is no basis for a decision to appeal, because the decision was only a recommendation, from a conceptual meeting with the Planning Board.

Case #1703 Peter T. & Sandra E. Scott (Continued Hearing)
Administrative Appeal, Article 14, Section 14.1
Applicant is alleging an error was made on 5/8/03 for a request to subdivide the existing 4.9 acre lot into two lots on Martin Road.
Tax Map 408-160 69 Martin Road

The board discussed this request. The board felt that the owners currently have a reasonable use of their property. Creating this proposed subdivision would not be compliant with the zoning ordinance, it would be creating an already non conforming use more non conforming. Leon Methot moved to approve point #1, June Purington seconded the motion. Vote: Unanimous against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point #2: Leon Methot moved to approve point #2, June Purington seconded the motion. Vote: 4 in favor (Purington, Esenwine, Dearborn, Wetherbee) and 1 against (Methot). Point #3a: Leon Methot moved to approve point #3a, Chairman Esenwine seconded the motion. Vote: unanimous against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point #3b: Leon Methot moved to approve point #3b, June Purington seconded the motion. Vote: unanimous vote against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point #3c: June Purington moved to approve point #3c, Harry Wetherbee seconded the motion. Vote: 4 in favor (Purington, Esenwine, Dearborn, Wetherbee) and 1 against (Methot). Point #4: June Purington moved to approve point #4, Jack Dearborn seconded the motion. Vote: unanimous vote against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point #5: June Purington moved to approve point #5, Leon Methot seconded the motion. Vote: Unanimous vote against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Jack Dearborn moved to grant the variance on Case #1703, Leon Methot seconded the motion. Vote: Unanimous vote against (Methot, Purington, Esenwine, Dearborn, Wetherbee). Therefore the motion fails for the following reason: All five points of hardship were not met, particularly points 1, 3a, 3b, 4 & 5.

Case #1803 Donald & Michelle Miller (Continued Hearing)
Variance, Article 18, Section 18.2.3

Applicant is requesting permission to relocate an existing shed within the setback of the property.

Tax Map 407-110

72 Lafrance Road

The board previously voted to dismiss the case for the reason that the application and supporting documents were not complete.

Case #1903 Gary Kitteredge (Continued Hearing)
Variance, Article 24, Section 24.6.1

Applicant is requesting to build a temporary shed to be built on the west side of Country 3 Corners. The shed will host equipment used in a treatment system.

Tax Map 408-171

833 South Stark Highway

The board agreed that Mr. Kitteredge meets the five points of hardship. Jack Dearborn moved to grant Case #1903 the variance with the condition that the shed be left no longer 5 or 60 days after the remediation process is complete, Leon Methot seconded the motion, all in favor.

Case #2003 Eric Grenier (Owner: Louis Page)
Variance, Articles 17 & 18, Sections 17.1.1 & 18.2.1

Applicant is requesting permission to build a residential home.

Tax Map 409-020

Bart Clough Road (Class VI)

The board previously voted to reject the application as it is a request for a second variance.

Case #2103 Timothy & Carol Galvin
Special Exception, Article 30-A, Section 30-A.3.1.3

Applicant is requesting permission to build a residential home.

Tax Map 407-093

488 Mt. Dearborn Road

The board previously voted to reject the application because it was not complete as far as drawings and plot plans.

Case #2203 Victor & Jeanne Thibeault
Special Exception, Article 19, Section 19.1.10

Applicant is requesting permission to build an in-law apartment addition.

Tax Map 403-016

765 Concord Stage Road

The board previously voted to reject the application because it is not complete as far as drawings and plot plans.

Case #2303 David E. Welch
Special Exception, Article 24, Section 24.8

Applicant is seeking permission to allow off street parking within the front and side setbacks.

Tax Map 109-017

299 South Stark Highway

The board previously voted to dismiss the application based on the fact there was no representation or written request from the applicant.

Case #2403 Eric R. Wood

Variance, Article 3, Section 3.5.1

Applicant is seeking permission to build a garage into the setback.

Tax Map 403-117

16 Blake Road (Private)

The board went over the five points of hardship. Point #1: Leon Methot moved to accept point #1, June Purington seconded the motion. Discussion: The board felt that he has a barrier of his septic system, well and well lines, steep slopes and doesn't have a problem moving 11 feet into the setback. Vote: 4 in favor (Methot, Purington, Dearborn, Wetherbee) and 1 opposed (Esenwine). Point #2: June Purington moved to accept point #2, Leon Methot seconded the motion. Vote: 4 in favor (Methot, Purington, Dearborn, Wetherbee) and 1 opposed (Esenwine). Point's #3a, 3b & 3c: Harry Wetherbee moved to accept point's #3a, 3b & 3c, June Purington seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point 4: June Purington moved to accept point #4, Leon Methot seconded the motion, unanimous vote in favor (Methot, Purington, Esenwine, Dearborn, Wetherbee). Point #5: Leon Methot moved to accept point #4, June Purington seconded the motion. Vote: 4 in favor (Methot, Purington, Dearborn, Wetherbee) and 1 opposed (Esenwine). Leon Methot moved to grant the variance on Case #2403 with the following conditions: 1) that the garage be located in accordance with the surveyed plot plan; 2) Private Road sign be posted at the entrance of the road and 3) Town of Weare liability disclaimer to be attached to the building lots deed and be recorded at the Hillsborough County Registry of Deeds as part of the deed, approved by Town Counsel, Harry Wetherbee seconded the motion. Vote: 4 in favor (Methot, Purington, Dearborn, Wetherbee) and 1 opposed (Esenwine).

V. OTHER BUSINESS:

JULY 8, 2003 MINUTES: Chairman Esenwine moved to approve the July 8, 2003 minutes as amended, June Purington seconded the motion, all in favor.

VI. ADJOURNMENT:

As there was no further business to come before the board, June Purington moved to adjourn at 10:30 PM, Leon Methot seconded the motion, all in favor.

Respectfully submitted,

Naomi L. Bolton
Land Use Coordinator